IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 12207 of 2007(C)

PETITIONER:

S.VIJAYAN, PRIYANKA HOUSE,
SANTHI NAGAR, KAZHAKOOTTOM P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.BIJU BALAKRISHNAN

RESPONDENTS:

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1. **STATE OF KERALA REPRESENTED BY THE SECRETARY, HOME DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.**

3. **THE ADDL. DIRECTOR GENERAL OF POLICE, CRIME BRANCH, CRIME BRANCH HEAD OFFICE, THIRUVANANTHAPURAM.**

4. **THE CITY POLICE COMMISSIONER, THIRUVANANTHAPURAM.**

5. **THE CIRCLE INSPECTOR OF POLICE, MEDICAL COLLEGE CIRCLE, THIRUVANANTHAPURAM.**

6. **CENTRAL BUREAU OF INVESTIGATION, NEW DELHI, REPRESENTED BY ITS DIRECTOR.**

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ
BY ADV. SRI.S.SREEKUMAR, SC FOR CBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

R.BASANT, J.

W.P.C.No.12207 of 2007

Dated this the 30th day of October 2007

J U D G M E N T

The petitioner is the father of the deceased, a married woman, with one child. She had fallen in love with her husband and their marriage was performed. Her husband had subsequently secured employment abroad. She, along with her child was residing in India and her husband was residing abroad in connection with his work. The husband's people did not relish the marriage of the petitioner's daughter and there are allegations that the relatives of the husband were mentally inflicting pain on the deceased. The husband of the deceased had insisted that she must reside with his grandmother's younger sister, one Nalini and she was therefore residing there. The child of the deceased was residing with the parents of the deceased at their house. The deceased and her husband had a house of their own. She allegedly used to go from the house of her husband's grandmother's sister to her own house during morning hours and return in the night. There are allegations that a maternal aunt of the husband of the deceased and her second husband who reside near the house of the husband of the deceased have been causing trauma to the deceased. The mother of the deceased used to visit her frequently at her own house. On the date of occurrence, that is 8/8/2004, the mother of the deceased had come to the house of the deceased and she had spent some time there. She had returned and it is the case of

the police now that when she left, there was nothing to suggest or apprehend any intention on the part of the deceased to commit suicide.

2. A little later, smoke was seen coming out from the house of the deceased. It was found that she was doused with kerosene and was set ablaze. A crime was registered under the caption 'unnatural death' under Section 174 Cr.P.C. Investigation commenced. Later, allegation under Section 306 read with 34 I.P.C has been raised against the maternal aunt and her husband. The final report has not been filed yet. It is the grievance of the petitioner that no proper, effective and efficient investigation has been conducted. He prays that the CBI may be directed to conduct the investigation.

3. I have perused the case diary in detail. I have heard the learned counsel for the petitioner and learned Public Prosecutor in detail. The learned Standing Counsel for CBI has also been heard.

4. The petitioner has been running from pillar to post complaining about the inadequate investigation in the crime. According to the petitioner, no proper investigation has been conducted so far and the investigators have not really come into grips with the issues involved. The petitioner relies on various circumstances to advance his contentions that it could not have been a case of suicide at all. I do not intend to be exhaustive but I must take note of the most important contentions which appear to influence me and create in me a sense of dissatisfaction about

the nature and quality of the investigation and the outcome thereof. The circumstances are:

i) The deceased, if she had committed suicide, must have disrobed herself almost completely and kept her clothes nearby inside the room and doused herself with kerosene before she set herself ablaze. No explanation whatsoever is yet available to explain such grossly improbable conduct of a young woman disrobing herself completely before choosing to commit suicide.

ii) The room inside which the deceased is alleged to have set herself ablaze did not indicate any panic on the part of the deceased or movements in panic by her to suggest such theory of suicide by fire.

iii) The empty can in which kerosene was brought and poured over her is found outside the room which was seen closed. No explanation has so far been offered as to how the can alone could be found outside the room if it were a case of suicide by her inside the room.

iv) Indications galore to suggest that soot particles had not gone into her lungs and this is relied on as a circumstance to suggest that burning must have been subsequent to her death.

v) Though, no specific injuries are seen noted in the postmortem certificate, the photographs suggest that the deceased had some injuries on her person which remain unexplained.

vi) The deceased was found in a sitting position in a chair and this, it is urged, is indicative of her being placed in that position and set ablaze. The burnt plastic parts of the chair were found adherent to her buttocks.

vii) Alcohol was detected in the stomach contents of the deceased.

5. I shall not from the above circumstances venture to make a comment at this stage as to whether the case was one of murder or suicide. Suffice it to say that I feel that there has not been sufficient and adequate investigation in the matter so far. I am satisfied that the investigation deserves to be entrusted to more competent and expert hands to unravel the mystery of the death of the deceased. From the point of view of the relatives of the deceased, from the point of view of the civil society as also from the point of view of those charged with the responsibility for maintenance of law and order, it is essential that a complete, competent, exhaustive and efficient enquiry is conducted to ascertain the real cause of death.

6. The thought as to the agency to whom the investigation must be entrusted does worry me. It may not be possible for this court to direct that the investigation in all such difficult cases be entrusted to the CBI. But in this case, I do note that the petitioner has been running from pillar to post and had in fact got orders in his favour calling upon the

police authorities of the State to conduct a proper and efficient investigation from the highest level. Directions have been given; but they have not been proved to be productive. In these circumstances, though conscious of the burden of the work which the CBI has to perform, I am satisfied that the interests of justice in the peculiar facts and circumstances of this case, must persuade this court to direct the CBI to take over the investigation in this case.

7. In the result, this petition is allowed. It is directed that crime No.114/04 of Thumba police station, which is now being investigated by the CBCID (crime No.16/CR/TVPM/2005) shall be continued by the sixth respondent, CBI.

8. I think it apposite to direct the State Government to make all facilities available to the CBI in the form of men and facilities to conduct a proper and efficient investigation. I do not want the State to lose sight of the fact that this court is constrained to direct the CBI to conduct the investigation because investigation by the State police force is found to be inadequate and not sufficient. That must impress upon the State the burden of responsibility on it to render necessary assistance to the CBI.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007